



Reprinted
February 2, 2007

SENATE BILL No. 206

DIGEST OF SB 206 (Updated February 1, 2007 4:01 pm - DI 101)

Citations Affected: IC 8-1.

Synopsis: Pollution control expenses for energy facilities. Amends the definition of "clean coal technology" in various statutes. Defines the term as a technology used at an electric generating facility to reduce airborne emissions that are regulated, or reasonably anticipated to be regulated, by the federal government, the state, or a political subdivision of the state. (The current definition includes only technologies that reduce sulfur or nitrogen emissions.) Allows an existing electric generating facility to petition the utility regulatory commission (IURC) for approval of a regulated air emissions project. Requires the IURC to: (1) approve the project if the IURC finds, after notice and hearing, the project to be reasonable and necessary; and (2) provide certain financial incentives for the project. Allows the IURC to provide certain additional incentives for an approved project.

Effective: Upon passage.

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January 11, 2007, read first time and referred to Committee on Utilities & Regulatory Affairs.

January 29, 2007, amended, reported favorably — Do Pass.

February 1, 2007, read second time, amended, ordered engrossed.

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SB 206—LS 7168/DI 101+



Reprinted
February 2, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 206

A BILL FOR AN ACT to amend the Indiana Code concerning
utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in
3 this section, "clean coal technology" means a technology (including
4 precombustion treatment of coal):

5 (1) that is used at a new or existing electric generating facility and
6 directly or indirectly reduces airborne emissions of ~~sulfur or~~
7 ~~nitrogen based~~ pollutants **that are:**

8 (A) associated with the combustion or use of coal; and
9 (B) **regulated, or reasonably anticipated to be regulated,**
10 **by:**

11 (i) the federal government;
12 (ii) the state;
13 (iii) a political subdivision of the state; or
14 (iv) any agency of a unit of government described in
15 items (i) through (iii); and

16 (2) that either:

17 (A) is not in general commercial use at the same or greater

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SB 206—LS 7168/DI 101+



scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with **the** combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated,** by:

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

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(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

"Qualified pollution control property" means an air pollution control device on a coal burning electric generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some nonIndiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

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(A) associated with the combustion or use of coal; and
 (B) **regulated, or reasonably anticipated to be regulated,**
 by:

- (i) the federal government;
- (ii) the state;
- (iii) a political subdivision of the state; or
- (iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing nonIndiana coal; after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and
 (B) **regulated, or reasonably anticipated to be regulated,**
 by:

- (i) the federal government;
- (ii) the state;

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(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated, by:**

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

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(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 6. IC 8-1-8.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

(2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.

(3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be achieved** by the proposed clean coal technology system.

(4) The reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.

(5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.

(6) The likelihood of success of the proposed project.

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(7) The cost and feasibility of the retirement of an existing electric generating facility.

(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.

(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

- (A) associated with the combustion or use of coal; and
- (B) **regulated, or reasonably anticipated to be regulated,** by:
 - (i) the federal government;
 - (ii) the state;
 - (iii) a political subdivision of the state; or
 - (iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

- (A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or
- (B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. IC 8-1-8.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.3. As used in this chapter, "existing**

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electric generating facility" refers to a facility in Indiana, other than a new energy generating facility, that, regardless of its fuel source, is used to generate electricity.

SECTION 9. IC 8-1-8.8-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) As used in this section, "regulated air emissions" means air emissions from an electric generating facility that are regulated, or reasonably anticipated to be regulated, by:

- (1) the federal government;
- (2) the state;
- (3) a political subdivision of the state; or
- (4) any agency of a unit of government described in subdivisions (1) through (3).

(b) As used in this section, "regulated air emissions project" means a project designed to reduce regulated air emissions from an existing electric generating facility. The term includes projects that provide offset programs, such as agricultural and forestry activities, that reduce the level of greenhouse gases in the atmosphere.

(c) An energy utility (as defined in IC 8-1-2.5-2) may petition the commission for approval of the construction, installation, and operation of a regulated air emissions project. If the commission finds, after notice and hearing, the proposed regulated air emissions project to be reasonable and necessary, the commission shall approve the project and provide the following incentives:

- (1) The timely recovery of costs associated with the regulated air emissions project, including capital, operation, maintenance, depreciation, tax, and financing costs incurred during the construction and operation of the project.
- (2) The recovery of costs associated with:
 - (A) the purchase of emissions allowances; or
 - (B) the payment of emission taxes;
 arising from compliance with air emissions regulations.

(d) In addition to the incentives described in subsection (c), the commission may provide any of the following incentives for an approved regulated air emissions project:

- (1) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on the project.
- (2) Other financial incentives the commission considers appropriate.

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1 SECTION 10. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 8, delete line 1 and insert "**electric generating facility**" refers **to a facility in Indiana**,".

Page 8, line 2, delete "that:" and insert "**that, regardless of its fuel source, is used to generate electricity**,".

Page 8, delete lines 3 through 5.

Page 8, line 10, delete "energy" and insert "**electric**".

Page 8, line 19, delete "energy" and insert "**electric**".

and when so amended that said bill do pass.

(Reference is to SB 206 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 7, Nays 3.

 SENATE MOTION

Madam President: I move that Senate Bill 206 be amended to read as follows:

Page 8, line 24, delete "finds" and insert "**finds, after notice and hearing**,".

Page 8, delete lines 31 through 33.

Page 8, line 34, delete "(3)" and insert "**(2)**".

Page 8, delete lines 38 through 39, begin a new paragraph and insert:

"(d) In addition to the incentives described in subsection (c), the commission may provide any of the following incentives for an approved regulated air emissions project:

(1) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on the project.

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(2) Other financial incentives the commission considers appropriate."

(Reference is to SB 206 as printed January 30, 2007.)

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